

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

February 17, 2004

CALL TO PODIUM:

Caroline Seiden
Planner

RESPONSIBLE STAFF:

Caroline Seiden
Planner

Trudy Schwarz
Director, Community Planning

AGENDA ITEM:

(please check one)

	Presentation
	Proclamation/Certificate
	Appointment
	Public Hearing
	Historic District
	Consent Item
X	Ordinance
	Resolution
X	Policy Discussion
	Work Session Discussion Item
	Other:

PUBLIC HEARING HISTORY:

(Please complete this section if agenda item is a public hearing)

Introduced	
Advertised	12/17/2003
	12/23/2003
Hearing Date	1/05/2004
Record Held Open	2/04/2004
Policy Discussion	2/17/2004

TITLE: TEXT AMENDMENT

T-363 An ordinance to amend Chapter 24 of the City Code (City Zoning Ordinance), Article III, entitled "Regulations Applicable to Particular Zones," Division 19, entitled "MXD Zone, Mixed Use Development," Section 24-160.D.3 to specify which uses are required to obtain a special exception in the MXD zone

SUPPORTING BACKGROUND:

In November 2002, text amendment T-351 was adopted. It specified that all special exception uses in the C-B, R-B, C-1, C-2, C-3, E-1, E-2 and I-3 zones are special exception uses in the MXD Zone. As a result, many uses considered desirable in the MXD zone must now go through the special exception process. Staff does not believe that the Mayor and Council intended to discourage the permitting process for desirable uses. In this text amendment each special exception use for the MXD zone is specifically listed, without reference to other zones. All other uses allowed by right in the R-B, C-B, C-1, C-2, C-3, E-1, E-2 and I-3 zones and not specifically prohibited or listed as special exception uses would be allowed by right in the MXD Zone.

A joint public hearing on T-363 was held on January 5, 2004. The Planning Commission's record was held open for 20 days (January 25, 2004) and is now closed. The Mayor and City Council record was held open for 30 days (February 4, 2004). There was no public testimony given regarding this text amendment during the public hearing and no written testimony was received while the record remained open. The Planning Commission at their February 4, 2004 meeting reviewed the proposed Text Amendment and has forwarded their recommendation of approval to the Mayor and City Council (Exhibit 11).

Attached:

Index of Exhibits

Exhibit 2: Draft Text Amendment Ordinance

Exhibit 8: Planning Commission Staff Report

Exhibit 9: Minutes of January 5, 2004, Joint Public Hearing

Exhibit 10: Transcript of January 5, 2004, Joint Public Hearing

Exhibit 11: Communication: Planning Commission

DESIRED OUTCOME:

Hold Policy Discussion and Approve Text Amendment T-363 Ordinance.

INDEX OF MEMORANDA

T-363

1. Application
2. Draft Ordinance
3. Letter requesting advertisement of the 01-05-04 Joint Public Hearing in the 12-17-03 and 12-24-03 issues of the *Gaithersburg Gazette*.
4. Notice of 01-05-04 Joint Public Hearing as sent on December 17, 2003
5. List of people/agencies notified of the hearing
6. Legal Advertisement Notification
7. **Staff Report:** January 5, 2004, Joint Public Hearing
8. **Staff Report:** February 4, 2004, Planning Commission Meeting for recommendation to the Mayor and City Council.
9. Minutes of January 5, 2004, Joint Public Hearing
10. Transcripts of January 5, 2004, Joint Public Hearing
11. Communication: Planning Commission
12. **Staff Report:** February 17, 2004, Mayor and City Council Policy Discussion

ORDINANCE NO. _____

AN ORDINANCE TO AMEND CHAPTER 24 OF THE
CITY CODE (CITY ZONING ORDINANCE) ARTICLE III
ENTITLED "REGULATIONS APPLICABLE TO PARTICULAR
ZONES", DIVISION 19 ENTITLED, "MXD ZONE, MIXED USE
DEVELOPMENT" SECTION 24-160D.3(a) AND 24-160D.3(b)
AND TO REPEAL AND REENACT WITH AMENDMENTS
SECTION 24-160D.3(d) SO AS TO SPECIFY THOSE
SPECIAL EXCEPTIONS ALLOWED IN THE
MXD ZONE.

Text Amendment No. T-363

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, Maryland in public meeting assembled that Chapter 24, Article III, Division 19, section 24-160D.3(a), Section 24-160D.3(b) are amended and Section 24-160D.3(d) is hereby repealed and reenacted, all to read as follows:

ARTICLE III. REGULATIONS APPLICABLE TO PARTICULAR ZONES

* * * * *

Division 19. MXD Zone, Mixed Use Development

* * * * *

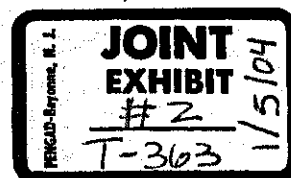
Sec. 24-160D.3. Uses Permitted

(a) *Residential.* All types of residential uses allowed by right [or by special exception] in Chapter 24 of this City Code shall be permitted, as well as accessory uses thereto.

(1)	*	*	*	*	*	*
(2)	*	*	*	*	*	*
(3)	*	*	*	*	*	*
(4)	*	*	*	*	*	*
(5)	*	*	*	*	*	*

* * * * *

(b) *Commercial/employment/industrial.* All uses allowed by right in any of the following zone: R-B, C-B, C-1, C-2, C-3, E-1, E-2 and I-3 Zones are permitted uses. [All uses allowed by special exception in the R-B, C-B, C-1, C-2, C-3, E-1, E-2 and I-3 zones shall be special exception uses in the MXD Zone and subject to approval by the City Board of Appeals. Designation of a use as a special exception, in any of the zones listed herein shall mean the use is a special exception in the MXD Zone,



notwithstanding the fact that such use may be allowed as a permitted use in any other zone referred to in this subsection (b).] The following uses are specifically prohibited:

(1)	*	*	*	*	*	*
(2)	*	*	*	*	*	*
(3)	*	*	*	*	*	*
(4)	*	*	*	*	*	*
(5)	*	*	*	*	*	*
(6)	*	*	*	*	*	*
(7)	*	*	*	*	*	*
(8)	*	*	*	*	*	*

(c) *Bed and Breakfast.* Bed and breakfast subject to the requirements contained in section 24-167B.

(d) *Special Exception Uses.* The following uses shall be special exception uses in the MXD Zone subject to approval by the City Board of Appeals notwithstanding the fact that such use may be allowed as a permitted use in any other zones referred to in the above subsections (a) and (b):

Amusement center, whether operated separately or in conjunction with any other permitted or special exception use

Assembling from prepared materials of electronic devices and electrical appliances

Boarding homes

Care homes

Cemeteries

Child or elderly care facilities in dwelling units other than single-family detached or duplexes accommodating not more than eight (8) individuals

Child or elderly care facilities for accommodating more than eight (8) individuals

Clinics

Commercial parks and other outdoor places of amusements, including miniature golf courses, driving ranges, carnivals and fairs.

Funeral parlors and undertaking establishments

Group residential facilities operated by nonprofit or public entities

Hospitals

Nursing and care homes

Private clubs

Public utilities uses, such as electric substations and offices, excluding the storage of material and trucks and repair facilities.

Radio and television broadcasting stations, towers and accessory structures

Telecommunications facilities

Towers, poles, antennas, buildings or other structures intended for use in connection with the operation of a commercial radio or television broadcasting station

* * * * *

ADOPTED by the City Council of Gaithersburg, Maryland on this _____ day of _____, 2004.

DELIVERED to the Mayor of the City of Gaithersburg, Maryland this _____ day of _____, 2004.

SIDNEY KATZ, Mayor

THIS IS TO CERTIFY that the foregoing Ordinance was adopted by the City Council of Gaithersburg, in public meeting assembled, on the _____ day of _____, 2004 and the same was approved by the Mayor of the City of Gaithersburg on the _____ day of _____, 2004. This Ordinance will become effective on the _____ day of _____, 2004.

DAVID B. HUMPTON, City Manager

STAFF COMMENTS FOR PLANNING COMMISSION

MEETING DATE: February 4, 2004

TEXT AMDT.: **T-363**

TITLE: **MXD SPECIAL EXCEPTION TEXT
AMENDMENT**

REQUEST: **RECOMMENDATION TO M&C**

ADDRESS: N/A

ZONE: MXD

APPLICANT/REPRESENTATIVE/ATTORNEY/DEVELOPER: (as applicable)

STAFF PERSON: Caroline Seiden, Planner

Enclosures:

Staff Comments

Exhibit 2: Text Amendment Ordinance

Exhibit 9: Minutes, City Council Meeting, January 5, 2003

Exhibit 10: Transcript of Joint Public Hearing on T-363, January 5, 2004



STAFF COMMENTS

A joint public hearing on T-363 was held on January 5, 2004. The Planning Commission's record was held open for 20 days (January 25, 2004) and is now closed. The Mayor and City Council record was held open for 30 days (February 4, 2004). At this time, there are two additions to the record: minutes from the January 5, 2004 City Council meeting (Exhibit 9) and transcript of the joint public hearing on T-363 (Exhibit 10). There was no public testimony given regarding this text amendment.

The T-363 Text Amendment is an Ordinance to amend Chapter 24 of the City Code (City Zoning Ordinance), Article III, entitled, "Regulations Applicable to Particular Zones," so as establish a specific list of special exception uses for the MXD zone and to eliminate reference to other zones.

In November 2002, text amendment T-351 was adopted. It specified that all special exception uses in the C-B, R-B, C-1, C-2, C-3, E-1, E-2 and I-3 zones are special exception uses in the MXD Zone. As a result, many uses considered desirable in the MXD zone must now go through the special exception process. Uses such as appliance repair shops, banks, barber and beauty shops, private educational institutions, parking lots and garages, public and private parks and playgrounds, general offices, pharmacies, trade and technical schools now require a special exception because they are listed as special exception uses in one of the other above-referenced zones.

Staff does not believe that the Mayor and Council intended to discourage the permitting process for desirable uses. Given this unintended consequence, the City Attorney has drafted a new text amendment in which each special exception use for the MXD zone is specifically listed, without reference to other zones. All other uses allowed by right in the R-B, C-B, C-1, C-2, C-3, E-1, E-2 and I-3 zones and not specifically prohibited or listed as special exception uses would be allowed by right in the MXD Zone.

This item is on your agenda for a transmittal of a recommendation to the Mayor and Council.

Council Member Somerset

1. Wished all a Happy New Year!
2. Mentioned that local pilot Gus McLeod is making another flight in hopes of becoming the first person to fly over the North and South Poles in a single-engine plane.

Council Member Marraffa

1. Wished all a Happy New Year!
2. Reported that local pilot Gus McLeod was running out of oil and had to land in the hopes of restarting the journey.
3. Thanked the Mayor and City Council and staff for their efforts to receive lighting on Quince Orchard.
4. Attended the National League of Cities Conference in Tennessee. Mentioned an article was written about the efforts local municipalities are doing to lobby Congress on the Patriot Act.

Mayor Katz

1. Announced the Mayor and City Council and Senior Staff will attend an Annual Dinner Meeting with the District 17 Legislative Delegation on January 6, 2004, to discuss the City's 2004 State Legislative Agenda and to receive a briefing from the Delegation on key issues for the upcoming legislative session.
2. Announced the Mayor and City Council will hold their Annual Retreat on January 16 - 17, 2004, at the Baltimore Marriott Waterfront. The purpose of the Retreat is to review and update the City's Strategic Plan and discuss the City's financial forecast. Additionally, the Retreat provides an opportunity to enhance the working relationship between the Mayor and Members of the City Council and Senior Staff. The Retreat agenda will be posted on the City's website and minutes will be kept of the Retreat and will be available for review by the public.
3. Suggested the City conduct a special meeting on Monday, January 12, 2004 to introduce draft smoking legislation options and hold public hearings on Monday, January 26, 2004, as a special meeting. The City Council concurred with the proposed meetings.

VII. FROM THE CITY MANAGER HUMPTON

Reported the City has been in contact with the Bill Simms, President of PEPCO to discuss street light outages and new installations. Mayor Katz and City Manager did express appreciation for the communication with PEPCO.

VIII. JOINT PUBLIC HEARING

T-363 - Application Requests Amendment of Chapter 24 of the City Code (City Zoning Ordinance), Article III, Division 19, (MXD Zone, Mixed Use Development) §24-160D.3 (a), (Uses Permitted, Residential) §24-160D.3(b) (Uses Permitted, Commercial/Employment/Industrial) and Repeal and Reenactment of §24-160D.3(d) (Uses Permitted, Special Exception Uses) to Specify Individually Each Special Exception Use for the MXD Zone

Planner Seiden stated the public hearing was advertised in the December 17 and 23, 2003 *Gazette*, with five exhibits in the record file. She gave a brief background on the above text amendment. In November 2002, T-351 was adopted which required that all special exception uses in the C-B, R-B, C-1, C-2, C-3, E-1, E-2 and I-3 zones are special exception uses in the MXD zone. As a result, some uses were considered desirable in the MXD zone, which were required to go through the special exception process. The new text amendment would allow those uses that would be special

exceptions in the MXD and all others to be permitted by right unless listed as currently prohibited.

There were no speakers from the public.

Motion was made by Commissioner Levy, seconded by Commissioner Bauer, that the Planning Commission record on T-363, be held open for twenty (20) days.

Vote: 5-0

Motion was made by Council Member Alster, seconded by Council Member Schlichting, that the City Council record on T-363, be held open for thirty (30) days.

Vote: 5-0

IX. POLICY DISCUSSIONS

1. T-360

Assistant City Manager Felton stated that a joint public hearing was held on November 17, 2003 with no public comment. He stated the proposed ordinance would make the Master Plan special conditions applicable to local map amendments, sketch plans, schematic development plans, concept plans, optional method applications, and special exceptions. He added that the record closed on December 8, 2003.

Council Member Somerset questioned requiring compliance with the Master Plan as guidelines and special conditions.

City Attorney Abrams stated that compliance with the Master Plan is mandatory if there is a statute which requires it to be mandatory; otherwise it would be considered to be guides. He stated the proposed ordinance is providing the necessary statutory framework to make it mandatory with reference to specific property or areas contained in the Master Plan.

Assistant City Manager Felton added that following the adoption of the Master Plan, staff will move forward to schedule a public hearing for the special condition recommendations.

Motion was made by Council Member Edens, seconded by Council Member Alster, that AN ORDINANCE TO AMEND CHAPTER 24 OF THE CITY CODE (CITY ZONING ORDINANCE), ENTITLED, "ZONING," ARTICLE I, ENTITLED, "IN GENERAL," SO AS TO CREATE NEW §24-8A ENTITLED, "APPLICABILITY OF SPECIAL CONDITIONS," TO REQUIRE COMPLIANCE WITH MASTER PLAN SPECIAL CONDITIONS ON APPROVALS OF APPLICATIONS FOR LOCAL MAP AMENDMENTS, SKETCH PLANS AND SCHEMATIC DEVELOPMENT PLANS, CONCEPT PLANS (CD ZONE), OPTIONAL METHOD AND SPECIAL EXCEPTIONS, AND FURTHER TO AMEND ARTICLE V, ENTITLED, "SITE DEVELOPMENT PLANS," §24-179A ENTITLED, "SPECIAL CONDITIONS," TO CONFORM TO NEW §24-8A OF CHAPTER 24 (Ordinance No. O-1-04) be adopted.

Vote: 5-0

TRANSCRIPT OF
JOINT PUBLIC HEARING

ON

T-363

**Application Requests Amendment of Chapter 24
of the City Code (City Zoning Ordinance), Article III,
Division 19, (MXD Zone, Mixed Use Development) §24-
160D.3 (a), (Uses Permitted, Residential) §24-160D.3(b)
(*Uses Permitted, Commercial/Employment/Industrial*) and
Repeal and Reenactment of §24-160D.3(d) (*Uses
Permitted, Special Exception Uses*) to Specify
Individually Each Special Exception Use
for the MXD Zone**

BEFORE THE
CITY OF GAITHERSBURG
MAYOR AND CITY COUNCIL
AND
PLANNING COMMISSION
ON

January 5, 2004

Transcribed by
Doris R. Stokes



PARTICIPANTS

CITY COUNCIL

Mayor Katz
Council Vice President Somerset
Council Member Alster
Council Member Edens
Council Member Marraffa
Council Member Schilchting

PLANNING COMMISSION

Chair Keller
Vice Chair Bauer
Commissioner Hicks
Commissioner Levy
Commissioner Winborne

CITY ATTORNEY

Stanley D. Abrams, Esq.

CITY MANAGER

David B. Humpton

STAFF

Planner Seiden

NO SPEAKERS FROM THE PUBLIC

Katz Caroline, I guess you are going to introduce the public hearing for the City?

Seiden Yes I will. This is a public hearing on T-363 to amend Chapter 24, Article III, Division 19, §24-160D.3 of the City Code. The hearing was duly advertised in the December 17 and December 23, 2003 *Gaithersburg Gazette*. At the present time, there are five (5) exhibits in the record file. They are referenced in an exhibit list in the file. The individual exhibits may be reviewed during the course of the meeting or the Planning and Code Administration Offices during regular business hours at City Hall. Any objections to the receipt of any exhibit should be noted prior to the closing of the record; otherwise they will be deemed received in evidence. The background of this is that in November of 2002, there was a text amendment T-351 which was adopted, which required that all special exception uses in eight different zones including the C-B, R-B, C-1, C-2, C-3, E-1, E-2 and I-3 zones would be special exception uses in the MXD zone as well. And as a result, there are some uses that were considered desirable in the MXD zone, which were required to go through the special exception process. So an unintended consequence of that text amendment was that it discouraged some of the desirable uses by slowing the permitting process for them. So this new text amendment would specifically list those uses that would be special exceptions uses in the MXD zone and then all others would be permitted by right unless they are listed as currently not allowed at all. That's basically it.

Katz Thank you very much. Any questions of Caroline?

Edens Desirable uses, are they all the ones that you've listed in your cover memo that would now be excluded?

Seiden Yes. Those are the main ones that we wanted to make sure were permitted by right that are currently special exception uses.

Edens Ok.

Katz Any other questions? Thank you very much. This is a time that the Mayor and Council hear from anyone who would like to speak on this public hearing topic. We ask that you please keep your remarks to no more than three minutes and I would advise you when you have 30 seconds left of your three minutes so that you can begin to finish your statement. Please note that any additional testimony that you might have can be submitted to the City in written form and will be a part of the record just as your oral testimony. Please state your name and address for the record. Do we have anyone who would like to speak on this topic? No? There is no one that would like to speak on this topic. It has been suggested that the City Council hold their record open for thirty (30) days, closing on February 4, 2004 and the Planning Commission hold their record open for twenty (20) days and close it on January 25, 2004.

Keller Do I have a motion from a Planning Commission Member?

Levy I move that the Planning Commission hold its record open on T-363 for twenty (20) days.

Bauer Second.

Keller All in favor?

Commission Ayes.

Keller Motion passes 5-0.

Katz It has been suggested that the Council hold their record open for thirty (30) days.

Alster Move that the Council hold its record open on T-363 for thirty (30) days.

Schlichting Second.

Katz It's been moved and seconded. All those in favor please say aye?

Council Ayes.

Katz Opposed? Carries unanimously (5-0) as well. Thank you very much.

END OF JOINT PUBLIC HEARING
T-363

COMMUNICATION: PLANNING COMMISSION

MEMORANDUM TO: Mayor and City Council

VIA: David Humpton, City Manager

FROM: Caroline Seiden, Planner

DATE: February 5, 2004

SUBJECT: T-363 -- Amendment of Chapter 24 of the City Code (City Zoning Ordinance), Article III, entitled, "Regulations Applicable to Particular Zones," Division 19, entitled "MXD Zone, Mixed Use Development," §24-160.D.3 to specify which uses are required to obtain a special exception in the MXD zone.

At its regular meeting on February 4, 2004, the Planning Commission made the following motion:

Commissioner Bauer moved, seconded by Commissioner Winborne, to recommend Text Amendment T-363 for ADOPTION to the Mayor and City Council.

Vote: 5-0

